

Remarks

This Response and Amendment is being filed in response to the final office action dated April 6, 2007 in the referenced application. The Applicant notes with appreciation the Examiner's efforts in advising the Applicant regarding the language of the claims to resolve the rejections under § 101. It is the Applicant's understanding that a tentative approval of the language of the independent claims of the application has been provided subject to the review of the Examiner's Primary Examiner.

Not OK.
Dennis
Myint
08/07/2007

The Examiner has rejected claims 1, 3, 5-7, 11, 13, 15-35, 40-46, 49, 52-53, 60-62 and 82-96 under 35 U.S.C. § 101, stating that the claims of the invention are directed to non-statutory subject matter. The Applicant wishes to state for the record that they are still in disagreement with the interpretation of the Examiner and the Primary Examiner of the sections of the MPEP regarding computer related non-statutory subject matter (§ 2106.01) and their assertion that the lack of a recitation of functionality within the claims renders the claims (directed to a data structure) as per se non-functional descriptive material. According to the Applicant's reading of the relevant sections of the MPEP and the applicable case law, the recording of functional descriptive material (a data structure is considered to be in this class) on a computer medium makes it structurally and functionally inter-related to the computer software and hardware, and thus statutory. *See MPEP § 2106.01*. That is, the recording of a data structure on a computer medium allows an interaction between the computer and the data structure which provides the normal functionality that one would expect of a data structure, that is the manipulation of the data stored in the data structure by the computer. As a result, the Applicants respectfully submit that there is no need to add functional limitations to the claims.

Note that on page five of the office action, the Examiner includes an excerpt from the MPEP § 2106.01 with particular text in bold and italics which states as follows: "When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electro-magnetic